

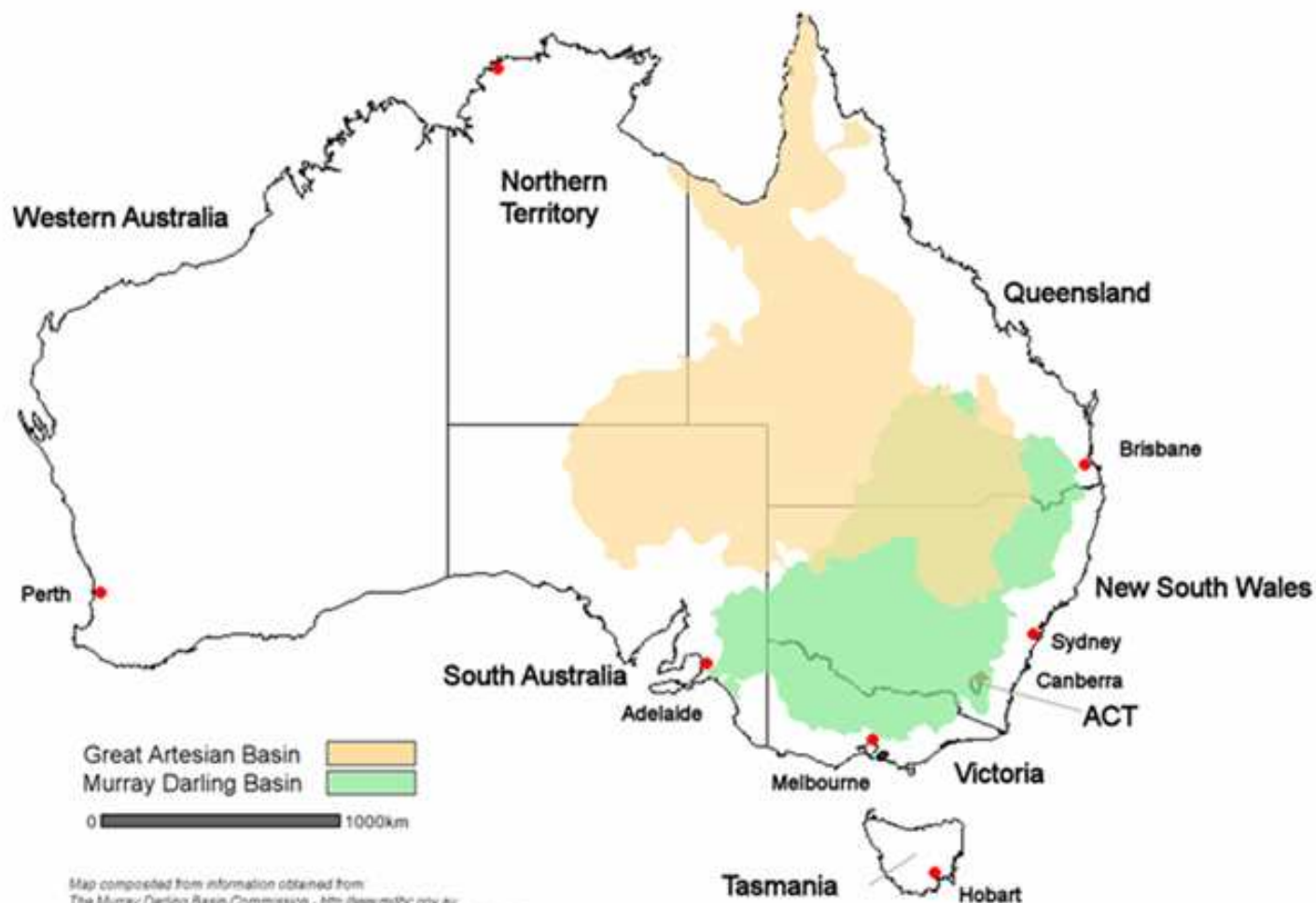


Transitions Toward Sustainability in Water Management Laws in Australia

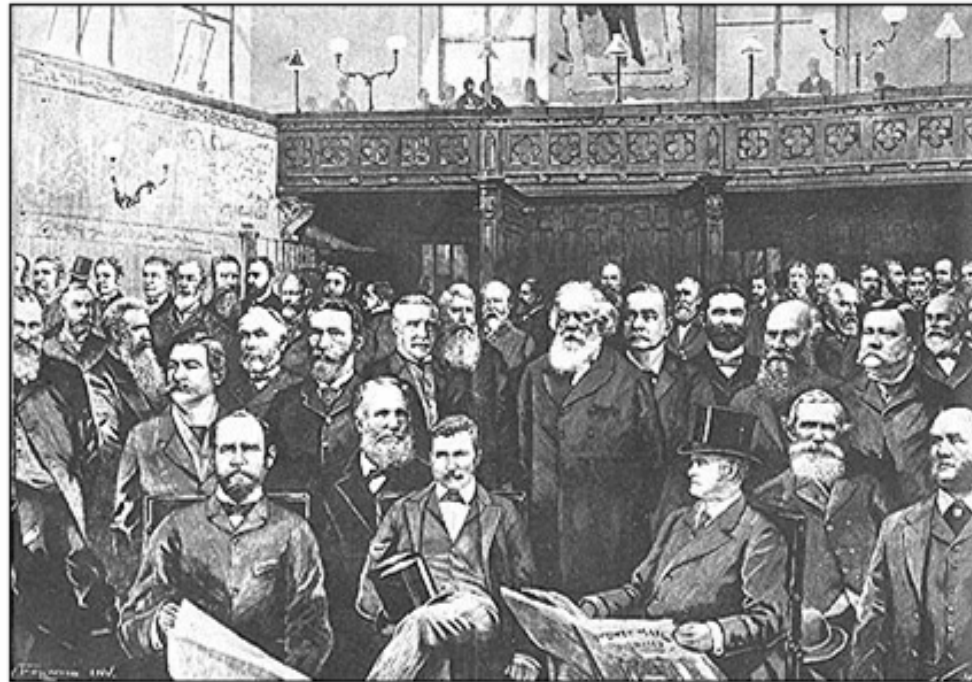
Professor Jennifer McKay
Centre for Comparative Water Policies and Laws
School of Commerce

Australia: Great Artesian and Murray Darling Basins

Figure 2. Great Artesian Basin & The Murray Darling Basin



Political Challenges of Water Management



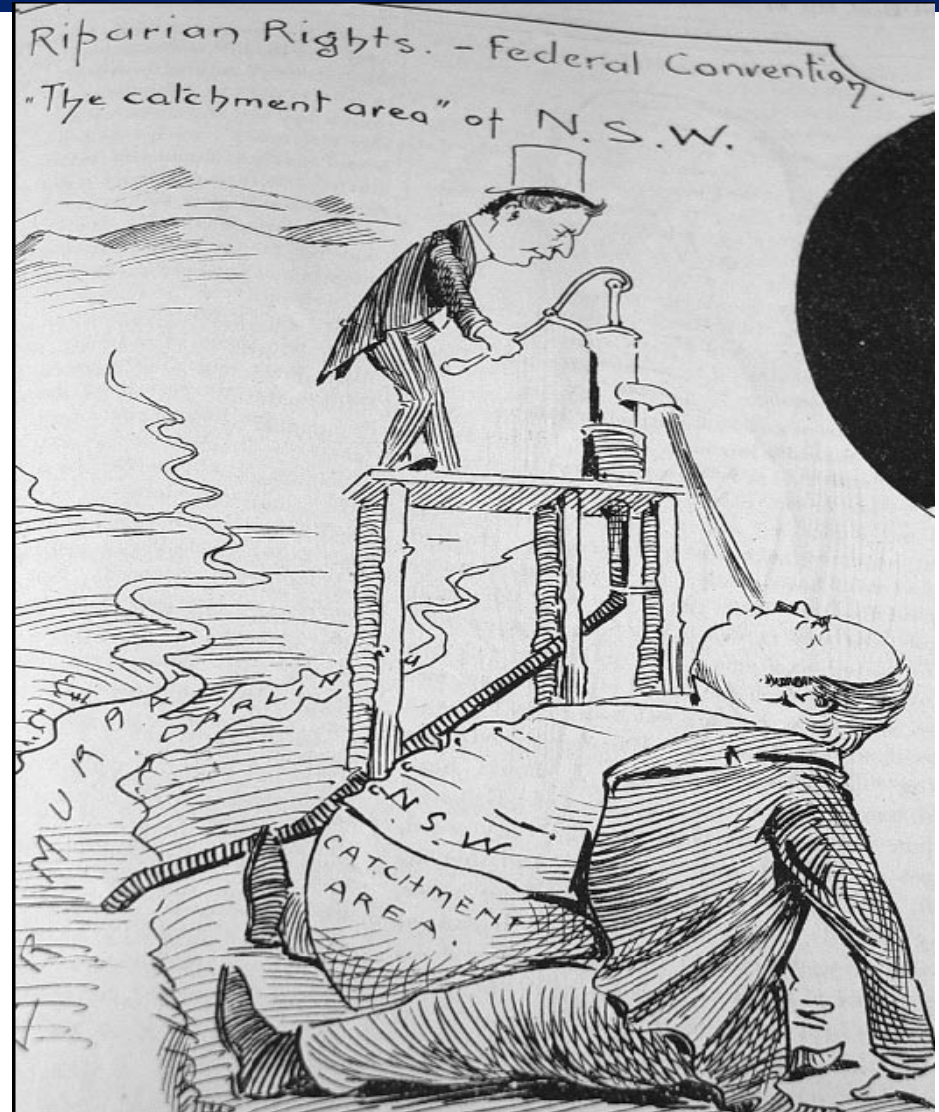
*Delegates at the National Convention in Sydney
02/03/1891 - 09/04/1891*

*Engraving from the Daily Mail
Image provided by the National Archive of Australia
NAA: A6180, 30/11/83/23*

“The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.”

*Section 100, Australian Constitution
9th July 1900*

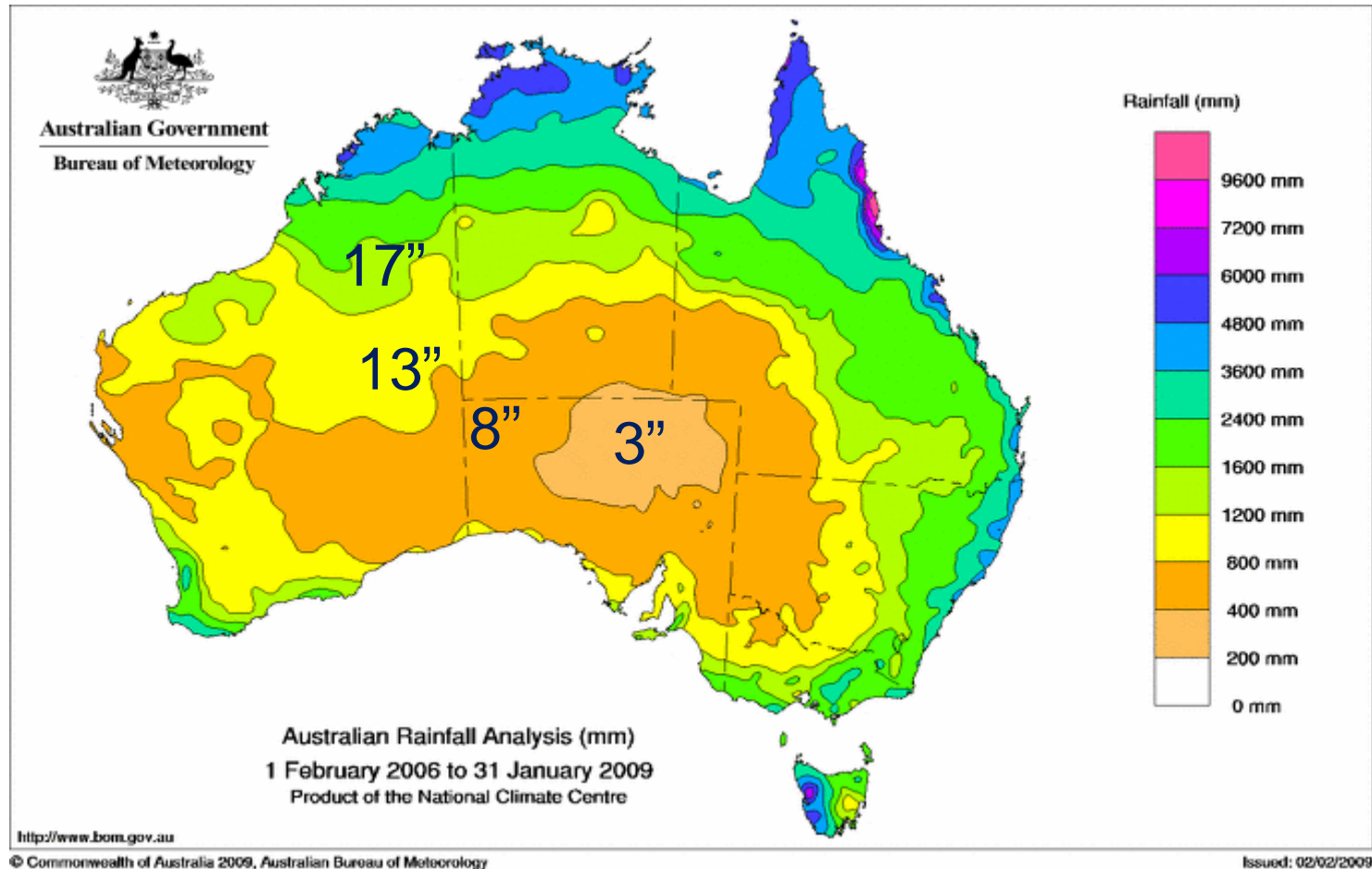
SA and Victoria Political Challenges in Water Allocation



5 Epochs of Australian Water Law

- 1) 1788-1901: State Colonial Laws**
- 2) 1901-1983: Fiscal Federalism**
- 3) 1983-1994: Treaties Power**
- 4) 1994-2007: State Power/Federal Push**
- 5) 2007: Commonwealth Oversight**
 - *Management in the National Interest*

Drought Continues



Rainfall: Last 3 Years



5th Epoch: *Water Act 2007*

- Enduring Serious Drought
- Commonwealth Enacts the *Water Act* in 2007
 - Relies on multiple powers in Constitution
 - States refer powers to Commonwealth (§ 51[37])
- Starts with Prime Minister Howard Decision
 - PM Frustration with State-Level Implementation of Cooperative Agreements
- New Government Secures Referral Power



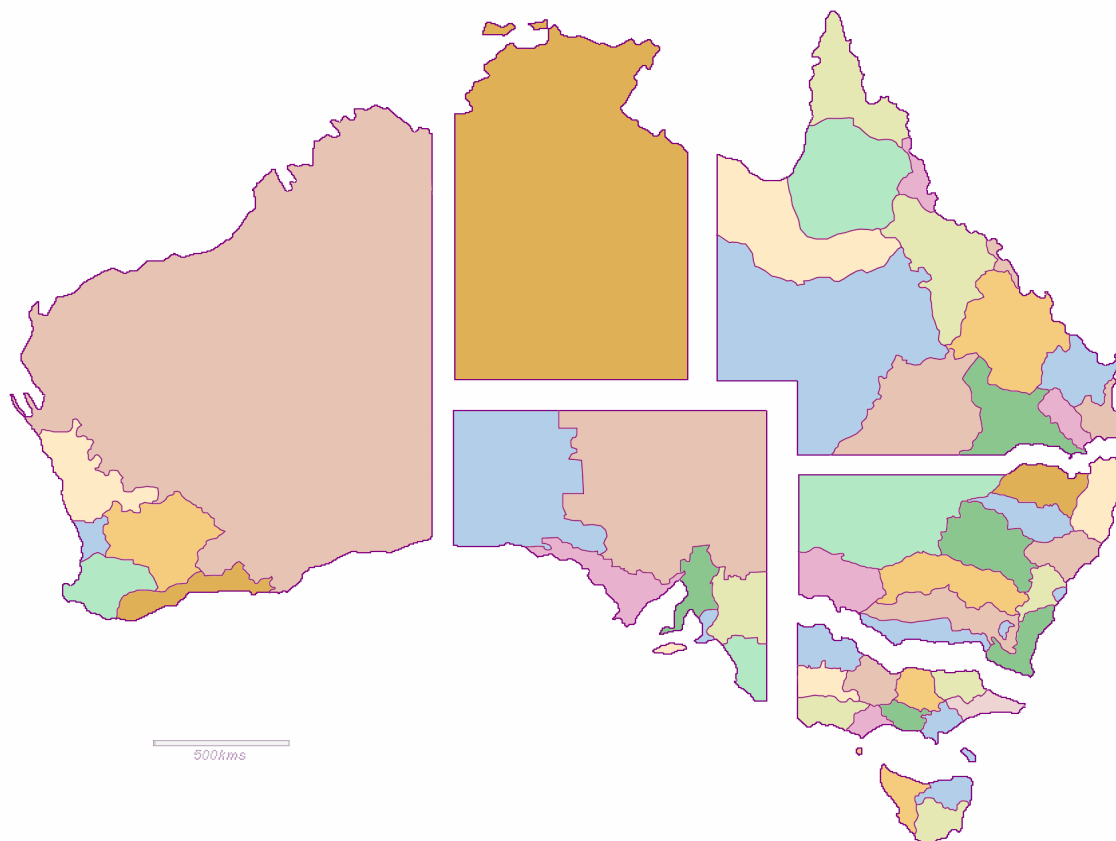
Water Act 2007: Key Elements

- Federalizes Murray-Darling Basin
- Requires Murray-Darling Basin Plan
- Requires Nat. Res. Mgmt. Plans
- Manages Water in “National Interest”
 - Implement International Agreements
 - Achieve Ecologically Sustainable Development
- Gov’t Holds Environmental Water
- Sets “Critical Human Needs” as First Priority

Water Act 2007: Accreditation of State/Basin Plans

- Federal Government Decides on Approval
- Regional Bodies Demonstrate Key Elements:
 - Comprehensive: cover full range of NRM issues
 - Science: underpinned by scientific analysis of natural resource conditions, problems and priorities
 - Process: effective stakeholder involvement in plan development and implementation

56 Natural Resource Management Regions



Summary Basin Plan

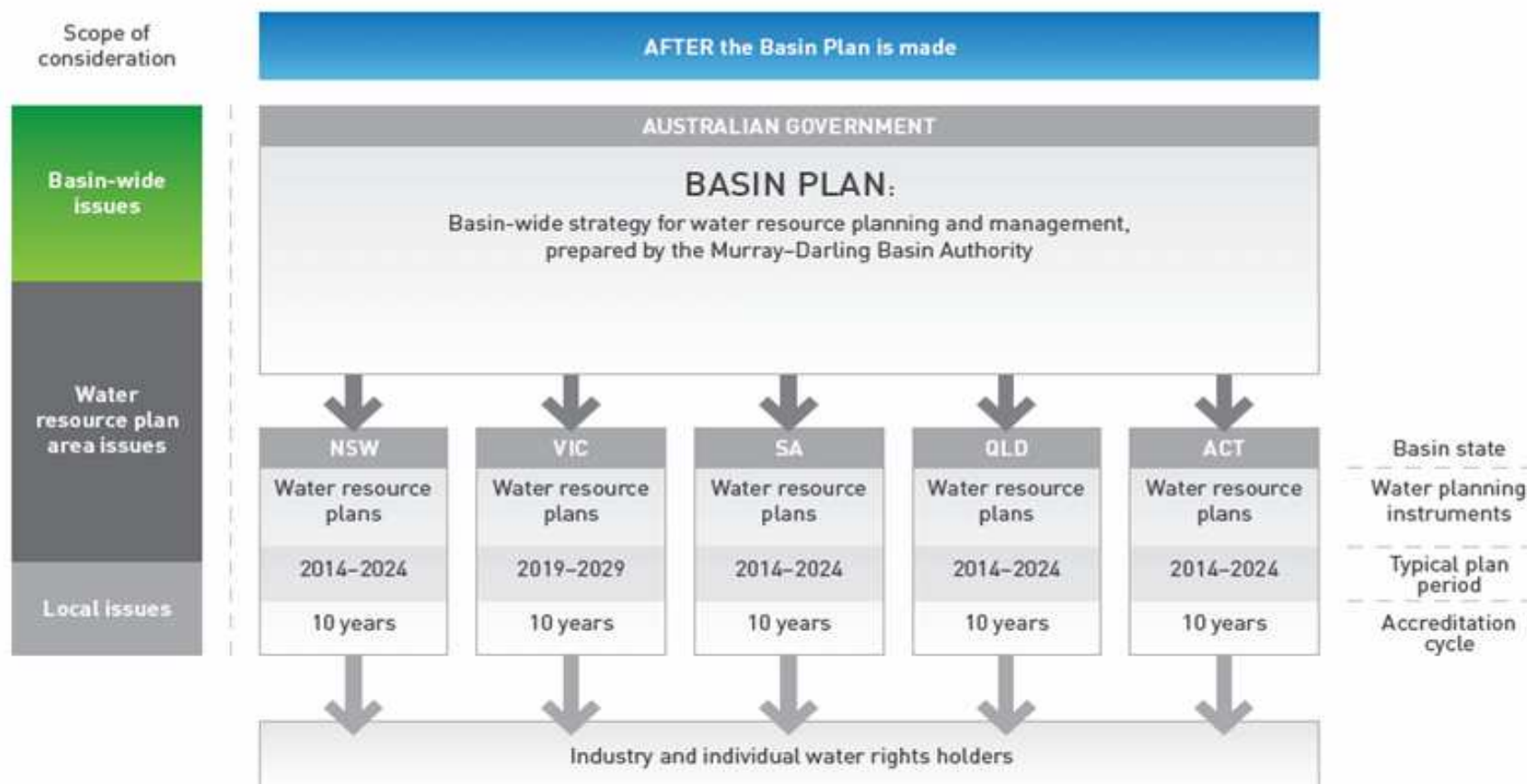


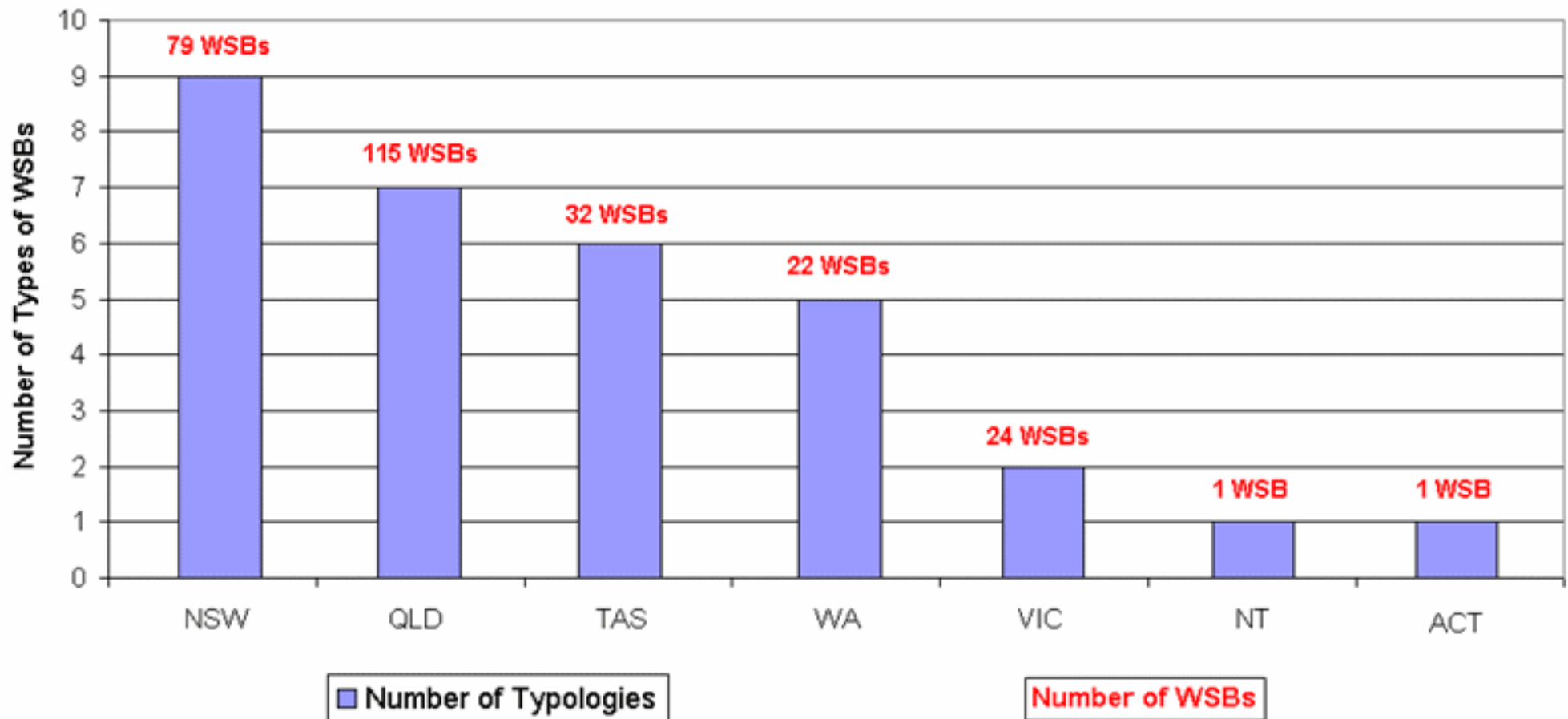
Fig. 4 General relationship of the state water resource plans to the Basin Plan

Water Plans in Regions

- Reduced Allocations
- Destroyed Some Industries(SA almonds)
- REQUIRE Share Of Consumptive Pool
- Compensation: allocation changes only
 - e.g. support a wetland
- Takes Long Time to Produce

Water Supply Businesses: Many Types

Number of Typologies Per State



Farmer Murphy

- Commonwealth Government Control
- Work in a Water Plan Area
- Engaged with Neighbours
- Trying to Achieve Sustainable Water Use
- Bears the Entire Risk:
 - water plans/allocations determined each year
- Sees New Water Rights Evolve

Complexity



Sustainable Development: 4 Elements

1. *Sustainable use.*
2. *Inter-generational Equity.*
3. *Equitable Use*
4. *Integration Principle*
 - *integrate environmental concerns into development decisions*

*Rio 1992; Various Australian government publications and laws such as the NWI
State laws and international treaties*

Community Reaction To Enhanced Water Regulation

- General increase in water theft in all jurisdictions [i]
 - especially in relation to rural users,
- Vociferous opposition to water shortages

[i] Canberra Times October 2006, Townsville Bulletin Queensland 2003 Dec 20,
Weekly times Melbourne Victoria 14 January 1998



Judicial Acceptance of Sustainable Development Law

“If individual members of the judiciary each work towards the common goal of achieving an environmentally sustainable future, the law on sustainable development will gain strength and through collective effort the goal will be reached.... it is clear the time for sustainable development has come, and it is essential that individual judges and national judiciaries seize the opportunity”

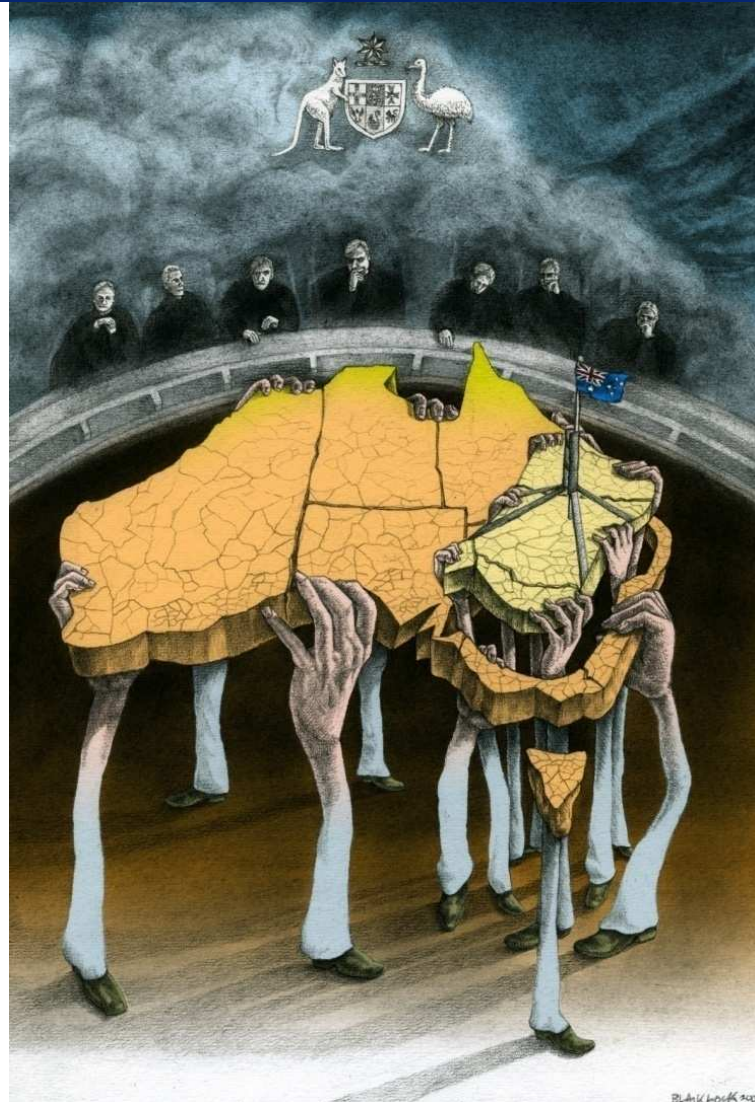
Hon. Brian Preston, Chief Judge NSW

Recent High Court Decision: *ICM* – takings case

- Claim: New Groundwater Licenses > 70% Loss
- Legal Issues:
 - Prior Licenses = Property?
 - Reduction = Takings?
- *Result: Reduced license amounts did **not** constitute a taking within meaning of § 51 of the Constitution*
- Citation:[2009] HCA 51 (9 December 2009)



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Lessons for USA

- Crisis > No Choice But Change
- Legislation: Fundamental Change Is Possible
- Assert Public Interest in Sustainability
- Public/Transparent Process is Critical
- Interstate Bickering Allows Federal Control
- Judges Can Accept Change